IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO.37 OF 2007

Krishna B. Mayenkar
Proprietor of Siddhi Sales Services,
H.No.7/121, Angod '
Mapusa, Goa. Petitioner
(Original Accused)

V/s

1. Shri Kamakashi Aquatics Pvt. Ltd.,
   A Pvt. Ltd. Company having its
   Registered Office at Mumbai,
   And Head Office at 1,
   Shanteri Van, Varkhande,
   Ponda, Goa, represented by its
   Managing Director
   Shri P. R. Shirodkar

2. State Respondent
(Original Complainant)

Mr. Arun Bras De Sa, Advocate for the Applicant.

Ms. Shradha Podwal, Advocate for the Respondent no.1

CORAM: N.A. BRITTO

DATE: 28TH JUNE 2007

ORAL JUDGMENT

1. Heard the learned Counsel on behalf of the petitioner/accused and the respondent/complainant.

2. This petition is filed against order dated 18.12.2006 by which the

Learned Judicial Magistrate First Class issued a non-bailable warrant with the view to execute the sentence imposed on the petitioner as modified by this Court by order dated 28.7.2006 in Criminal Revision Application no.28/2005. In terms of said order dated 28.7.2006 the petitioner/accused was to undergo a substantive sentence of two months simple imprisonment with a set off of 24 days under section 138 of the Negotiable Instruments Act, 1881. The petitioner/accused was further required to pay an amount of Rs.29,000/- to the respondent/complainant, forthwith and in case that was not paid, the accused was required to undergo simple imprisonment for a period of two months. There is no dispute that the petitioner/accused did not pay the said amount of Rs.29,000/-, forthwith as was required by virtue of the said order dated 28.7.2006. There is also no dispute that the petitioner/accused paid the said amount much subsequently in two installments of Rs.15,000/- and Rs.14,000/0 on 2.11.2006 and 18.12.2006, respectively.

3. Learned Counsel on behalf of the petitioner submits that since the petitioner paid the said amount of Rs.29,000/- the petitioner may not be required to undergo the sentence in default, of two months.

4. In my view the prayer of the petitioner cannot be acceded to. The order dated 28.7.2006 has attained finality and it is not permissible in law to modify the same by taking recourse to Section 482 of the Code of Criminal

Procedure, 1973. In Criminal Misc. Application No.373 of 2006 by unreported judgment dated 23/11/2006 in case of **Prakash Borcar V/s Sukhalal Kumar,** this Court has held as follows:-

> This Court has become functus officio after pronouncing the Judgment dated 23.8.2006 and the same cannot be reviewed, as sought by the accused in prayer (a) of the application for any reasons whatsoever except as contemplated by Section 362 of the Code. I have my respectful agreement with the observations of the learned Single Judge of Allahabad High Court in **Chhotey Signh and others V/s State of Uttar Pradesh** (supra) that an application for compounding, assuming that there was one before this Court, could be entertained only while the appeal was pending and cannot be entertained after the disposal of the appeal.

5. The petition, therefore, is hereby dismissed.

N. A. BRITTO,J.

rp.